

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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[www.montgomerycountymd.gov/content/council/boa/index.asp](http://www.montgomerycountymd.gov/content/council/boa/index.asp)

**Case No. A-6181**

**PETITION OF ALEM M. MOGES**  
(Hearing held January 24, 2007)

**OPINION OF THE BOARD**  
(Effective date of Opinion, March 9, 2007)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Section 59-C-1.323(a). The existing single-family dwelling requires a variance of 12.50 feet as it is within 17.50 feet of the established front building line (Michigan Avenue) and also a variance of 18.33 feet as it is within 6.67 feet for the streetline setback (Pennsylvania Avenue). The petitioner proposes the construction of a two-story addition that requires a variance of 13.33 feet as it is within 11.67 feet of the required streetline setback (Pennsylvania Avenue) and the construction of a covered porch that requires a variance of 17.50 feet as it is within 12.50 feet of the established front building line (Michigan Avenue). The required established front building line is thirty (30) feet and the required streetline setback is twenty-five (25) feet.

Mr. Moges appeared with his wife at the public hearing, but did not provide testimony. Alan Kinney, project designer, also appeared with the petitioner at the public hearing.

The subject property is Part of Lot 9, Block 2, Perkins & Burrows Addition to Linden, located at 2209 Michigan Avenue, Silver Spring, Maryland, 20910, in the R-60 Zone (Tax Account No. 01409597).

Decision of the Board: Requested variances **granted**.

**EVIDENCE PRESENTED TO THE BOARD**

1. The existing single-family dwelling requires a variance from the southern front yard boundary (Michigan Avenue) and a variance from the western side yard boundary (Pennsylvania Avenue). The petitioner proposes the construction of a two-story addition that requires a variance from the western side yard boundary (Pennsylvania Avenue) and a covered porch that requires a variance from the southern front yard boundary (Michigan Avenue).

2. Mr. Kinney testified that the subject property is located at the intersection of Michigan and Pennsylvania Avenues and that the existing house is currently located in the required front and side yard setbacks. Mr. Kinney testified that the original plat of the property was recorded on April 3, 1894 and that at that time all of the lots in the subdivision were that same size. Mr. Kinney testified that over time the subject property's total area has been reduced and that it is a small, shallow lot. Mr. Kinney testified that the petitioner's lot is the smallest in the subdivision and is 6,750 square feet. Exhibits 4(a) [site plan], 9 [zoning vicinity map], and 12 [April 3, 1894 subdivision plat].
3. Mr. Kinney testified that in 1983 Pennsylvania Avenue was widened and that the subject property was reduced by 5 feet in the widening of the street and that the lot is 45 feet in width. Mr. Kinney testified that the application of the required setbacks to the subject property results in a buildable footprint that is 13 feet in width. Mr. Kinney testified that the existing porch footprint is not being expanded, but that the porch is currently off-center of the house, and that the new construction will center the porch at the front of the house.

### **FINDINGS OF THE BOARD**

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

*(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that the subject property is a small, shallow lot and that the application of the required setbacks to the lot result in a buildable footprint that is 13 feet in width. The Board finds that the existing house is currently located in the southern front yard setback and in the western side yard setback and that the proposed construction will not extend beyond the existing footprints. The Board finds that a 13 foot wide footprint is effectively unbuildable for a single-family residence.

The Board finds that these are exceptional conditions peculiar to the subject property and that the strict application of the zoning

regulations will result in practical difficulties to and an undue hardship upon the property owners.

*(b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variance request for the existing single-family dwelling, the two-story addition and the covered porch are the minimum reasonably necessary.

*(c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The Board finds that the proposed construction will continue the residential use of the property and that the variances will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

*(d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that the proposed construction will not materially impact the view from the surrounding properties and that the variances will not be detrimental to the use and enjoyment of the neighboring and adjoining property owners.

Accordingly, the requested variances: (1) of 12.50 feet from the required thirty (30) foot established front building line (Michigan Avenue) for the existing single-family dwelling; of 18.33 feet from the required twenty-five (25) foot streetline setback (Pennsylvania Avenue) for the existing single-family dwelling; (3) of 13.33 feet from the required twenty-five (25) foot streetline setback (Pennsylvania Avenue) for the construction of a two-story addition; and (4) of 17.50 feet from the required thirty (30) foot established front building line (Michigan Avenue) for the construction of a covered porch are granted subject to the following conditions:

1. The petitioner shall be bound by all of her testimony and exhibits of record, and the testimony of her witness, to the extent that such evidence and representations are identified in the Board's Opinion granting the variances.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4(a) and 4(b) and 5(a) through 5(h).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Donna L. Barron, seconded by Wendell M. Holloway, with Caryn L. Hines, Catherine G. Titus and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution.

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Allison Ishihara Fultz  
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 9th day of March, 2007.

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Katherine Freeman  
Executive Director

**NOTE:**

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.